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19 MCNEIL-PPC, INC.

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23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25
26 LANA ISAID,
27 Plaintiff,
28 v.
MCNEIL-PPC, INC. and DOES 1 to 10,
Defendants.

6633
Case No. CV 11-0663 TEH

STIPULATION AND [PROPOSED]
ORDER REGARDING CONFIDENTIAL
INFORMATION

29
30 WHEREAS, certain documents and information may be sought, produced, or exhibited by
31 and among the parties to the above-styled proceeding (the "Action") which relate to the parties'
32 confidential and proprietary information that may be subject to protection pursuant to Fed. R. Civ.
33 P. 26(c); and

1 WHEREAS, the parties will provide a significant amount of discovery materials in this
 2 Action and the parties agree that a protective order will facilitate a timely and efficient discovery
 3 process;

4 IT IS THEREFORE STIPULATED, by the parties through their respective counsel, as
 5 follows:

6 **Scope**

7 1. This Protective Order shall govern all documents, the information contained
 8 therein, and all other information produced or disclosed during this Action whether revealed in a
 9 document, deposition, other testimony, discovery response or otherwise, by any party in this
 10 Action (the “Supplying Party”) to any other party or parties (the “Receiving Party”).

11 2. Third parties who so elect may avail themselves of, and agree to be bound by, the
 12 terms and conditions of this Protective Order and thereby become a Supplying Party for purposes
 13 of this Order.

14 3. The entry of this Protective Order does not prevent any party from seeking a
 15 further order of this Court pursuant to Fed. R. Civ. P. 26(c).

16 4. Nothing herein shall be construed to affect in any manner the admissibility at trial
 17 or any other court proceeding of any document, testimony, or other evidence.

18 **Confidential Information**

19 5. “Confidential Information,” as used herein, means information of any type, kind or
 20 character that the Supplying Party believes in good faith constitutes, reflects, discloses, or
 21 contains information subject to protection under Fed. R. Civ. P. 26(c)(1)(G), whether it is a
 22 document, information contained in a document, information revealed during a deposition or
 23 other testimony, information revealed in an interrogatory response, or information otherwise
 24

1 revealed. Any transcript of an in camera hearing shall be treated as confidential pursuant to this
 2 Order.

3 6. Specific documents and discovery responses produced by a Supplying Party may
 4 be designated as containing Confidential Information by marking the pages of the documents, or
 5 copies thereof, with the words "Confidential Information – Subject to Protective Order" without
 6 obscuring any part of the text. Such a designation shall subject the document and its contents to
 7 this Order.

8 7. Any material produced or provided in this Action for inspection is to be treated by
 9 the Receiving Party as Confidential Information pending the copying and delivery of any copies
 10 of the same by the Supplying Party to the Receiving Party.

11 8. Information disclosed at any deposition taken in connection with this Action may
 12 be designated by any party as Confidential Information in accordance with the procedures set
 13 forth below. All testimony provided at deposition shall be considered Confidential Information
 14 for a set period of time as set forth below and the court reporter shall mark all pages of deposition
 15 testimony taken in this Action with the designation "Confidential Information — Subject to
 16 Further Confidentiality Review." In order to maintain the Confidential Information status of such
 17 testimony, a party must notify all other parties and the court reporter in writing within forty-five
 18 (45) days of receipt of the final transcript of the conclusion of a witness' testimony of the specific
 19 pages and lines of the transcript that should be treated as confidential. Only those portions of the
 20 transcript so designated at the end of that 45 day period shall be deemed Confidential
 21 Information.

22 **Confidential Information Produced in Electronic Form**

23 9. This Order will also govern the use and distribution of Confidential Electronic
 24 Information.

1 10. The designation by the Supplying Party of the storage medium containing
 2 Confidential Electronic Information shall serve to designate each of the files on the medium.
 3

4 11. Where the Receiving Party seeks to share Confidential Information with
 5 permissible parties as described herein, the Receiving Party shall mark printouts of Confidential
 6 Electronic Information with the legend, "Confidential – Subject to Protective Order" prior to
 7 disseminating the Confidential Information.
 8

9 12. The Receiving Party shall mark the storage medium of any permissible copies of
 10 the Confidential Electronic Information with the legend "Confidential – Subject to Protective
 11 Order."
 12

13 13. The Receiving Party shall use reasonable efforts to prevent Confidential Electronic
 14 Information from being stored in a computer to which individuals not authorized under this Order
 15 to view Confidential Information have access. The Receiving Party shall also take reasonable
 16 steps to ensure that printouts and copies of Confidential Electronic Information maintained by the
 17 Receiving Party are kept in a manner that will prevent unauthorized users from viewing the
 18 printouts or copies.

Permissible Disclosure of Confidential Information

19 14. The Receiving Party may show and deliver Confidential Information only to the
 20 following people:
 21

- 22 (a) Plaintiffs' counsel of record, including attorneys, clerical, secretarial and
 23 other staff employed or retained by such counsel;
- 24 (b) outside counsel for Defendants, including attorneys, clerical, secretarial
 25 and other staff employed or retained by such counsel;
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- 27
- 28

- (c) designated in-house counsel for Defendants, including the clerical, secretarial and other staff working directly for in-house counsel in the legal department;
 - (d) with respect to any Confidential Information produced by any Plaintiff or third-party Plaintiff, any employee of the Receiving Party to whom it is necessary to disclose such information for the purpose of assisting in, or consulting with respect to, the preparation of this Action;
 - (e) experts and consultants retained by any Party for purposes of assisting the Parties and their attorneys of record in the preparation and presentation of the claims or defenses in this case if the proposed recipient signs the attestation attached as Exhibit A; however, if any Plaintiff wishes to disclose Confidential Information to such an expert or consultant who is or has been within the past six (6) months an employee, officer, director, agent, contractor, subcontractor or non-litigation consultant of any company that manufactures, markets, distributes, or sells pharmaceuticals, the party wishing to make such disclosure shall provide the counsel who designated such information as confidential with information concerning the proposed recipient that does not identify the proposed recipient but is sufficient to permit an informed decision to be made with respect to any potential objection. If the Supplying Party objects to the proposed disclosure, it shall within ten (10) days (1) request that the Court direct the party wishing to make disclosure to produce additional information about the proposed recipient and/or (2) submit such papers and argument as it may feel are necessary to allow the Court to make an informed decision.

1 Because only the party seeking to make the disclosure may know who the
2 proposed recipient is, it is the responsibility of the party seeking to make
3 the disclosure to determine whether prior to making any disclosure whether
4 the proposed recipient is a person described in this paragraph;

- 5 (f) Judges and court reporters, court personnel or videographers present at
6 trial, conferences, hearings, arguments or depositions held in this case,
7 subject to the terms set forth below;
- 8 (g) any Special Master appointed by the Court in this case, and any members
9 of their staffs to whom it is necessary to disclose the information;
- 10 (h) Subject to the provisions of paragraph 8, the Receiving Party may show
11 Confidential Information to a witness during a deposition, hearing, or trial
12 in this case. Confidential Information shown to any witness during a
13 deposition shall not lose its Confidential status through such use, and
14 counsel shall exercise their best efforts and take all steps reasonably
15 required to protect its confidentiality during such use. If, after a deposition
16 is noticed or a hearing or trial is set, the Supplying Party objects to
17 Confidential Information being shown to that witness, the Supplying Party
18 shall attempt to confer with counsel to resolve the issue. If counsel are
19 unable to resolve the issue themselves, counsel may seek an order from the
20 Court prohibiting or limiting such use or for other relief. Furthermore, any
21 deponent, other than a current employee of the Supplying Party or the
22 author or recipient of a document containing Confidential Information,
23 shall be shown a copy of this Order before being shown or examined about
24
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Confidential Information, and the terms of this Order will apply to any deponent who is shown or examined about Confidential Information;

- (i) with respect to any Confidential Information produced by any Plaintiff or third-party Plaintiff, any treating physician or health care provider of the Plaintiff to whom it is necessary to disclose such information for the purpose of assisting in or consulting with respect to, the preparation of this case;
 - (j) other persons who may be specifically designated by consent of the Supplying Party or pursuant to Court Order; and
 - (k) any physician who treated a plaintiff for whom there is a litigation need to disclose Confidential Information produced by Defendant if the physician signs the attestation that is attached hereto as Exhibit A.

15. Confidential Information shall not be disclosed or made available to persons other than those listed above.

16. All persons to whom Confidential Information is provided under this Order shall be furnished with a copy of this Order and shall be bound by its terms, and counsel for each party shall maintain a log of all persons to whom they have provided a copy of this Order. Furthermore, prior to the disclosure of Confidential Information to any person identified in Paragraph 14(e), 14(h), 14(i), or 14(k) hereof, besides being provided with a copy of this Order and agreeing to be bound by its terms, such person shall also execute a copy of the attestation which is attached as Exhibit "A." Counsel for the Party to whom the Confidential Information was produced shall obtain and maintain a copy of the executed attestations.

17. With respect to a testifying expert designated by any Party in this case, a copy of such attestation shall be produced at the time the expert is deposed.

1 18. Before disclosing Confidential Information to any person who is, independent of
2 this litigation, a current director, officer, employee of, or counsel for a company other than
3 Defendants that is marketing or has in development any acetaminophen product, or a consultant,
4 other than an occasional consultant, who is currently consulting with respect to any
5 acetaminophen-containing product, the party wishing to make such disclosure shall give at least
6 ten (10) days advance notice in writing to the counsel who designated such information as
7 confidential, stating the names and addresses of the person(s) to whom the disclosure will be
8 made. If, within the ten-day period, a motion is filed objecting to the proposed disclosure, the
9 designated document or item shall not be disclosed unless and until ten days have elapsed after
10 the appeal period from a Court order denying the motion. Alternatively, the party wishing to
11 make such disclosure may provide the counsel who designated such information as confidential
12 with information concerning the proposed recipient that does not identify the proposed recipient
13 but is sufficient to permit an informed decision to be made with respect to any potential objection.
14 If there is no consent to the disclosure within ten (10) days, the party wishing to make the
15 disclosure may submit the information to the Court for a determination of whether the disclosure
16 may be made. The objecting party will have opportunities to (1) request that the Court direct the
17 party wishing to make disclosure to produce additional information about the proposed recipient
18 and/or (2) submit such papers and argument as it may feel necessary to allow the Court to make
19 an informed decision. Because only the party seeking to make the disclosure may know who the
20 proposed recipient is, it is the responsibility of the party seeking to make the disclosure to
21 determine prior to making any disclosure whether the proposed recipient is a person described in
22 this paragraph.

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1 **Use of Confidential Information**

2 19. All Confidential Information produced or exchanged in the course of this Action
 3 shall be used solely for the purpose of preparation and trial of this Action and shall not be used in
 4 connection with any other matter or for any other purpose. Confidential Information shall not be
 5 disclosed to any person except in accordance with the terms hereof.

6 20. Nothing contained herein shall be deemed to restrict in any manner any Party's use
 7 of its own Confidential documents or materials.

8 21. Nothing herein shall affect the right of any Party to seek additional protection
 9 against the disclosure of any documents or materials.

10 **Protection of Confidential Information**

11 22. Counsel shall take all reasonable and necessary steps to assure the security of any
 12 Confidential Information and will limit access to Confidential Information to those persons
 13 authorized by this Order. In addition, any summary or copy of information shall be subject to the
 14 terms of this Order to the same extent as the information or document of which such summary or
 15 copy is made, and must be clearly labeled "Confidential Information – Subject to Protective
 16 Order."

17 23. If Confidential Information in the possession of a Receiving Party is subpoenaed
 18 by any court, administrative or legislative body, or any other person or organization purporting to
 19 have authority to subpoena such data or information, the party to whom the subpoena is directed
 20 shall not, to the extent permitted by applicable law, provide or otherwise disclose such documents
 21 or information without first waiting ten (10) business days after notifying (and confirming
 22 notification) counsel for the Supplying Party in writing of (1) the information and documentation
 23 which is requested for production in the subpoena; (2) the date on which compliance with the
 24 subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4)

1 the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index,
 2 docket, complaint, charge, civil action or other identification number or other designation
 3 identifying the litigation, administrative proceeding or other proceeding in which the subpoena
 4 has been issued.

5 24. If a Receiving Party learns of any unauthorized disclosure of Confidential
 6 Information, the party shall immediately upon learning of such disclosure inform the Supplying
 7 Party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to
 8 prevent disclosure by each unauthorized person who received such information and to recover the
 9 Confidential Information received by each unauthorized person.

10 25. In the event a Supplying Party discovers after the production of any documents,
 11 materials, or information that it inadvertently produced or provided discovery of any Confidential
 12 Information without redacting, marking, or identifying it as confidential, the Supplying Party may
 13 provide written notice to the Receiving Party that the document, thing or other information,
 14 response, or testimony is Confidential Information and should be treated as such in accordance
 15 with the provisions of this Order. Upon receipt of such notice, the Receiving Party must treat such
 16 documents, things, information, responses, and testimony as Confidential Information, and upon
 17 receipt of properly marked documents, shall return the unmarked documents and things and shall
 18 not retain same, and shall take reasonable steps to ensure others have not retained copies thereof.
 19

20 26. The disclosure of information or documents to any person not qualified to receive
 21 such information or documents pursuant to the terms and conditions of this Order, or without
 22 following the terms and conditions of the Order, may subject the person making such disclosure
 23 to a finding of contempt and the imposition of sanctions, costs or other penalty, as ordered by the
 24 Court.
 25

1 27. The inadvertent production by any Party, whether in this Action or in any other
 2 proceedings, of a document subject to a claim of privilege, work product, or other statutory or
 3 court-ordered confidentiality shall not result in a waiver of any of the foregoing protections in this
 4 Action for the produced document or for any other privileged or immune documents containing
 5 the same or similar subject matter. Furthermore, irrespective of what may have already occurred
 6 or what may occur in the future in productions made during other proceedings, the fact of an
 7 inadvertent production by a party in this Action shall not be used as a basis for arguing that a
 8 claim of privilege, work product, or other statutory or court-ordered confidentiality has been
 9 waived in such other proceedings. If any party should inadvertently produce a document, upon
 10 notice of such disclosure, all originals and copies thereof, as well as all notes or other work
 11 product reflecting the contents of such materials, shall be immediately returned to the Supplying
 12 Party, and such returned material shall be deleted from any litigation support or other database. If
 13 the Receiving Party wants to challenge the claim of privilege, work product, or other statutory or
 14 court-ordered confidentiality, it must also promptly present the information in dispute to the court
 15 under seal for a determination of the claim. The Supplying Party must preserve the information
 16 until the claim is resolved. If the Receiving Party does present the information in dispute to the
 17 court and its motion/challenge is denied, then the Receiving Party shall promptly comply with the
 18 provisions regarding the return of documents and materials derived from the privileged
 19 documents.

20 28. Nothing herein shall prevent disclosure beyond the terms of this Order if the Party
 21 designating the information as Confidential Information consents in writing to such disclosure or,
 22 if the Court, after notice to all affected parties and a hearing, orders such disclosure.

23 29. Within **five (5) years** after conclusion of any attorney's last case in this Action,
 24 including any appeals related thereto, all Confidential Information produced pursuant to this
 25

1 Order, including all copies and notes taken from such information containing summaries of such
2 Confidential Information (other than attorney work product which shall be clearly labeled as
3 containing Confidential Information, and shall be maintained as confidential under the terms of
4 this order), shall be destroyed by the party in possession thereof and certified to have been
5 destroyed by an affidavit provided to the Supplying Party. This includes all Confidential
6 Information provided to outside persons. Counsel for the party who disseminated the Confidential
7 Information shall bear the burden of retrieving any such documents from outside persons and
8 destroying those documents in accordance with this paragraph. All such destruction shall be
9 completed in a manner reasonably calculated to preserve the confidentiality of the material both
10 during and after destruction.

Privilege Logs

14 30. For discovery material withheld from production pursuant to a claim of attorney-
15 client privilege, work product protection, or other applicable privilege or immunity, the
16 designating party shall produce one or more privilege logs in Excel or a similar electronic form
17 that allows text searching and organization of data. The designating party will produce a
18 privilege log within 60 days following the production of documents from which the privileged
19 documents are withheld. The log will be accompanied by a glossary of the names and affiliations
20 of the legal personnel named in the log. The log will contain the following information for each
21 item not produced for reasons of privilege, to the extent providing this information will not
22 destroy the privilege:
23

(c) A description of the nature of the document sufficient to enable the receiving party to assess the applicability of the privilege or protection.

31. Logging Emails. When there is a chain of privileged emails, the designating party need only include one entry on the privilege log for the entire email chain, and need not log each email contained in the chain separately.

32. Modifying Deadline for Privilege Logs. The parties may modify the deadlines for production of privilege logs by agreement.

33. Documents That Need Not Be Logged. Neither Plaintiffs nor Defendants are required to include on their privilege logs (a) privileged communications with outside counsel whose representation is relevant to the subject matter of this lawsuit or (b) redactions from produced documents, provided the reason for the redaction appears on the redaction label (e.g., Privileged, Work Product, Personal Information).

Changes in Designation of Confidential Information

34. Any party may object to the propriety of the designation (or redesignation) of specific material as Confidential Information by serving a written objection upon the Supplying Party's counsel. The Supplying Party or its counsel shall thereafter, within ten (10) calendar days, respond to such objection in writing by either: (i) agreeing to remove the designation, or (ii) stating the reasons for such designation. If the Objecting Party and the Supplying Party are subsequently unable to agree upon the terms and conditions of disclosure for the material(s) in issue, the document will have its designation removed unless within thirty (30) days after written notice that the parties' negotiations are ended, the Supplying Party moves the Court for an order upholding the designation. On such motion, the Supplying Party shall have the burden of proving that the material is Confidential Information. The material(s) in issue shall continue to be treated as Confidential Information unless and until the Court decides otherwise.

1 35. Any Supplying Party may designate as Confidential Information or withdraw a
 2 Confidential Information designation from any material it has produced; provided, however, that
 3 such redesignation shall be effective only as of the date of the redesignation. The redesignation
 4 shall be accomplished by notifying counsel for each party in writing of such redesignation and
 5 simultaneously producing a re-designated copy of such material.

7 **Filing Papers in Court Records**

8 [This process is addressed by the Northern District's Local Rules]

9 36. All requests to submit to the Court papers consisting of, relating to, containing,
 10 incorporating, reflecting, describing, or attaching Confidential Information, or to seal documents
 11 filed with the Court shall comply with Local Civil Rules 7-11 and 79-5.

12 **Miscellaneous Provisions**

13 37. The Receiving party, whether Plaintiff or Defendants, shall bear the cost of
 14 reproduction of all documents, materials, or other things, or portions thereof (and the information
 15 contained therein) which is stipulated to be eighteen cents (\$.18) per page/image. This fee is
 16 intended and construed only as a reimbursement for reproduction. It does not indicate any
 17 transfer of ownership in the reproduced documents.

18 38. It is expressly understood by and between the Parties that in producing
 19 Confidential Information in this litigation, the parties shall be relying upon the terms and
 20 conditions of this Order.

21 39. By written agreement of the parties, or upon motion and order of the Court, the
 22 terms of this Order may be amended or modified. This Order shall continue in force until
 23 amended or superseded by express order of the Court, and shall survive any final judgment or
 24 settlement in this Action.

1 40. Notwithstanding any other provision in the order, nothing in this Order shall affect
2 or modify Defendants' ability to review Plaintiffs' information and report information to
3 regulatory agencies.

4 IT IS SO STIPULATED.
5
6

7 Dated: October 30, 2012

DRINKER BIDDLE & REATH LLP

8
9 By: s/ Sally F. White
Sally F. White

10 Attorneys for Defendant

11 Dated: November 1, 2012

MEUSER LAW GROUP, INC.

12
13 By: /s/ Mark P. Meuser
Mark P. Meuser

14 Attorneys for Plaintiffs

15
16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17
18
19 Dated: 11/05, 2012

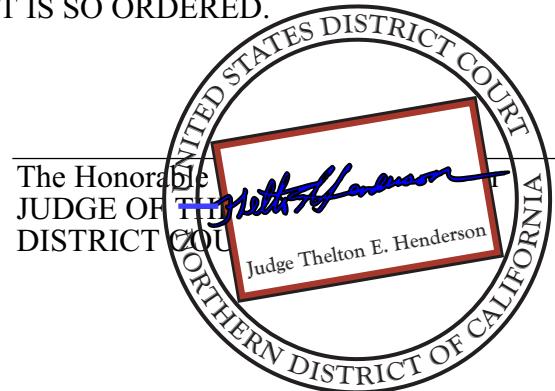


EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LANA ISAID,
Plaintiff,

Case No. CV 11-0663 TEH

MCNEIL-PPC, INC. and DOES 1 to 10,
Defendants.

STATE OF)
)
COUNTY OF) SS:

I, [REDACTED], being duly sworn, state that:

My present address is _____ . My present employer

1 _____ . My present
2 occupation is _____ .
3

4 I have received a copy of the Protective Order in this action. I have carefully read and
5 understand the provisions of the Order.
6

7 I will comply with all of the provisions of the Protective Order. I will hold in confidence,
8 will not disclose to anyone not qualified under the Protective Order, and will use only for
9 purposes of this action, any Confidential Information, including the substance and any copy,
summary, abstract, excerpt, index or description of such material, that is disclosed to me.
10

11 I will return all Confidential Information that comes into my possession, and all
12 documents and things that I have prepared relating thereto, to trial or outside counsel for the party
13 by whom I am employed or retained or from whom I received such material when requested to do
14 so.
15

16 I understand that if I violate the provisions of the Protective Order, I will be subject to
17 sanctions by the Court and that the parties may assert other remedies against me. I hereby submit
18 to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this
action.
19

20 _____
Signature
21

22 _____
Printed Name
23

24 Sworn and subscribed to before me this
____ day of _____, 201____.
25

26 _____
Notary Public
27

28 _____
My Commission expires:
